

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1817 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

WORKMEN OF MACHINE SHOP SUB- DIVISION

Appearance:

MR PG DESAI, Govt.Adv. for Petitioners

MR HK RATHOD for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/97

ORAL JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioners, State of Gujarat, through Deputy Secretary to Government, Roads & Buildings Department, and Deputy Executive Engineer, Machine Shop Sub Division (Roads & Buildings Department), filed this Special Civil Application and challenge has been made to the Award of

the Labour Court, Ahmedabad, made in Ref.(LCA - D) No.43 of 1982 made on 17.12.86. This Award has been published on 5.2.87. An industrial dispute has been raised pertaining to their four demands incorporated in the Award. The operative part of the Award reads as under:

The first party shall treat all employees working in the W/shop having completed 240 days in each year as permanent and shall pay all benefits attached to permanent employees of the State Government. I further direct the first party to treat all employees working as daily wagers in the workshop of the first party to treat them as permanent employees if they have completed 240 days in each year. I further direct the first party to grant festival holidays with full wages including all allowances to the workcharge employees as well as daily wages working in the establishment of the first party as prescribed by the Government to the office staff employees working in the first shift. Demand No.4 in respect of washing allowance not being pressed by the union hereby stands disposed of. The first party shall comply with the directions given in the award within one month from the date of publication of the award. The first party is further directed to pay Rs.250/- as costs to the union.

#. The learned counsel for the petitioners very fairly submitted that under the Government Resolution dated 17th October 1988, and the subsequent Resolutions, the Government itself has resolved to lay down the service conditions of daily wages inclusive of the provision for giving them the regular pay scale as well as other facilities at par to the permanent employees. This Resolution has been amended from time to time and now even there is a provision of giving of pension and other retirementary benefits to the daily wagers subject to fulfillment of conditions as laid down. The learned counsel for the petitioners submitted that in view of the aforesaid Resolutions, the cases of all the workmen for whose benefits Reference has been made before the Labour Court, are covered under those Resolutions, but the only grievance made by the learned counsel for the petitioners is that the ratio of the aforesaid Award is that if an employee completes 240 days in a year, he has to be made permanent and shall be paid all the benefits which the permanent employees are getting, which is not tenable.

#. I find sufficient justification in the grievance made

by the learned counsel for the petitioners. The daily wagers have no right to hold the post as well as right of regularization of their services on a permanent basis only on the ground that they have completed one year service. In the case of Himanshukumar Vidyarthi & Ors. v. State of Bihar & Ors., reported in 1997(4) SCC 391, the Hon'ble Supreme Court has held that daily wager employees have no right to hold the post. There is yet another objectionable part in the Award impugned by the petitioners in this Special Civil Application. The conception of permanency has to be taken into consideration with reference to services of employees, here, the daily wagers. Permanency of these persons cannot be equated or put at par with substantive appointments and confirmation thereafter in regular appointment. The daily wagers who have been appointed on or before a particular date as given in Resolution dated 17th October 1988 have been conferred certain benefits which are inclusive of regular pay scale on completion of five years' service as well as other service benefits. It is not case of workmen that they are permanent employees as they are permanently employed in the cadre and that they have been selected after selection under the recruitment rules. So, in view of the Resolution of the Government dated 17th October 1988, though nothing substantive survives in this Special Civil Application and it deserves to be dismissed, however, it is made clear that the part of the Award where it says that the daily wagers, on completion of 240 days in a year have to be treated as permanent employees, should be read in consonance and in the light of the Resolution dated 17th October 1988. This Award may not be taken to be a decision that all the daily wagers, on completion of 240 days' service in a year have to be given benefit of the Resolution dated 17th October 1988. It is further made clear that the words used, "to be made permanent" in the impugned Award should be construed and read in the context of the provisions of the Resolution dated 17th October 1988 and subsequent Resolutions which have been made from time to time by the Government. Rule discharged subject to aforesaid observations. No order as to costs. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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